

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2151
(Judiciary Committee)
(At the request of the Attorney General)

AN ACT to create and enact a new section to chapter 54-12 of the North Dakota Century Code, relating to transferring the state crime laboratory division including the state toxicologist to the office of the attorney general and to provide for transfer of related administrative rules; to amend and reenact sections 19-01-10 and 19-03.1-37, subsection 2 of section 28-32-01, sections 31-13-01, 31-13-03, 31-13-04, 31-13-05, 31-13-07, 31-13-08, and 31-13-09, and subsection 9 of section 39-20-07 of the North Dakota Century Code, relating to the state crime laboratory, the state toxicologist, and DNA testing; to repeal sections 12-60-21, 12-60-22, and 23-01-09.1 of the North Dakota Century Code, relating to the bureau of criminal investigation and the state toxicologist; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-01-10 of the North Dakota Century Code is amended and reenacted as follows:

19-01-10. Department to make analyses, inspections, and examinations - Report of examination as evidence - Publication of report. The department shall make, or cause to be made, analyses, examinations, and inspections of all products, articles, compositions, or things included under this title whenever such analyses, inspections, or examinations are necessary to determine whether any of such products, articles, compositions, or things violate this title relating to the products, articles, compositions, or things in question, or violate any definition, standard, tolerance, rule, or regulation issued with regard to such products, articles, compositions, or things pursuant to any provision contained in this title. ~~The department may also~~ However, the state crime laboratory shall make or cause to be made, analysis, examination, inspection, or test of any product, article, composition, or thing at the request of any prosecutor, defense counsel, or law enforcement officer in the state of North Dakota when such analysis, examination, inspection, or test is made in connection with an investigation into violations of the criminal law of this state. A copy of any report issued by the department or the state crime laboratory of the examination or analyses of any product, article, composition, or thing, duly authenticated by the ~~chemist~~ person making the analysis or examination, when given under oath, is prima facie evidence in all courts of the matters and facts therein contained. The department may collect samples of any product, article, composition, or thing for the purpose of making analyses, inspections, and investigations in connection with research carried on by it and may publish the reports thereof for the information of the public.

SECTION 2. AMENDMENT. Section 19-03.1-37 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-37. Burden of proof - Liabilities.

1. It is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.
2. In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, the person is presumed not to be the holder of the registration or form. The burden of proof is upon the person to rebut the presumption.

3. No liability is imposed by this chapter upon any authorized state, county, or municipal officer engaged in the lawful performance of the officer's duties.
4. In all prosecutions under this chapter, chapter 19-03.2, or chapter 19-03.4 involving the analysis of a substance or sample thereof, a certified copy of the analytical report signed by the state toxicologist, or the toxicologist's designee, or the director of the ~~forensic sciences division of the state department of health~~ crime laboratory, or the director's designee, must be accepted as prima facie evidence of the results of the analytical findings.
5. Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena the state toxicologist or the director of the ~~forensic sciences division of the state department of health~~ crime laboratory, or any employee of either, to testify at the preliminary hearing and trial of the issue at no cost to the defendant. If the state toxicologist, the director of the ~~forensic sciences division of the state department of health~~ crime laboratory, or any employee of either, is subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16.
6. In all cases of conspiracy to violate chapter 19-03.1, 19-03.2, or 19-03.4, the state is not required to prove or establish that a conspirator knew the other person to the agreement intended to deliver or possess with intent to deliver a controlled substance, an imitation controlled substance, or drug paraphernalia to a third person.

SECTION 3. AMENDMENT. Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
 - a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the central personnel system as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
 - b. The adjutant general with respect to the division of emergency management.
 - c. The council on the arts.
 - d. The state auditor.
 - e. The department of commerce with respect to the division of economic development and finance.
 - f. The dairy promotion commission.
 - g. The education factfinding commission.
 - h. The educational technology council.
 - i. The board of equalization.

- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, North Dakota municipal bond bank, North Dakota mill and elevator association, and North Dakota farm finance agency.
- m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
- n. The pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The state fair association.
- r. The ~~state department of health~~ attorney general with respect to the state toxicologist.
- s. The board of university and school lands except with respect to activities under chapter 47-30.1.
- t. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- u. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- v. The secretary of state with respect to rules adopted for the presidential preference contest under section 16.1-11-02.3.
- w. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.

SECTION 4. AMENDMENT. Section 31-13-01 of the North Dakota Century Code is amended and reenacted as follows:

31-13-01. Definitions. As used in this chapter, unless the context otherwise requires:

- 1. "Department" means the department of corrections and rehabilitation.
- 2. ~~"Division" means the forensic science division of the department of health.~~
- 3. "DNA" means deoxyribonucleic acid.
- 3. "Laboratory" means the state crime laboratory.

SECTION 5. AMENDMENT. Section 31-13-03 of the North Dakota Century Code is amended and reenacted as follows:

31-13-03. (Effective through July 31, 2004) Persons to be tested - Costs. The court shall order any person convicted on or after August 1, 1995, of any sexual offense or attempted sexual offense in violation of sections 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, subdivision e or f of subsection 1 of section 12.1-20-07, or section 12.1-20-11 or any other offense when the court finds at sentencing that the person engaged in a nonconsensual sexual act or sexual contact with another person during, in the course of, or as a result of, the offense and any person who

is in the custody of the department after July 31, 1995, as a result of a conviction of one of these offenses to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in law enforcement identification data bases. The court shall order any person convicted after July 31, 2001, of a felony offense contained in chapter 12.1-16, 12.1-17, or 12.1-18, section 12.1-22-01, or chapter 12.1-27.2 and any person who is in the custody of the department after July 31, 2001, as a result of a conviction for one of these offenses to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in the law enforcement identification data bases. Notwithstanding any other provision of law, if the sentencing court has not previously ordered a sample of blood or other body fluids to be taken, the court retains jurisdiction and authority to enter an order that the convicted person provide a sample of blood or other body fluids as required by this section. Any person convicted after July 31, 1995, who is not sentenced to a term of confinement shall provide a sample of blood or other body fluids as a condition of the sentence or probation at a time and place specified by the sentencing court. The sentencing court shall assess the cost of the procedure against the person being tested. The department shall collect the cost of the procedure from the person being tested and transfer the amount collected to the ~~state department of health~~ attorney general for deposit in the general fund.

(Effective after July 31, 2004) Persons to be tested - Costs. The court shall order any person convicted on or after August 1, 1995, of any sexual offense or attempted sexual offense in violation of sections 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, subdivision e or f of subsection 1 of section 12.1-20-07, or section 12.1-20-11 or any other offense when the court finds at sentencing that the person engaged in a nonconsensual sexual act or sexual contact with another person during, in the course of, or as a result of, the offense and any person who is in the custody of the department on or after August 1, 1995, as a result of a conviction of one of these offenses to have a sample of blood and other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in law enforcement identification data bases. Notwithstanding any other provision of law, if the sentencing court has not previously ordered a sample of blood and other body fluids to be taken, the court retains jurisdiction and authority to enter an order that the convicted person provide a sample of blood and other body fluids as required by this section. Any person convicted on or after August 1, 1995, who is not sentenced to a term of confinement shall provide a sample of blood and other body fluids as a condition of the sentence or probation at a time and place specified by the sentencing court. The cost of the procedure must be assessed to the person being tested.

SECTION 6. AMENDMENT. Section 31-13-04 of the North Dakota Century Code is amended and reenacted as follows:

31-13-04. DNA testing - Procedure - Immunity - Penalty. The samples of blood and other body fluids for DNA testing must be obtained in a medically approved manner by a physician, registered nurse, licensed practical nurse, phlebotomist, medical technologist, or other qualified medical personnel approved by the ~~division~~, laboratory and packaged and submitted in containers provided by the ~~division~~ laboratory and in accordance with rules adopted by the ~~division~~ laboratory. No civil or criminal liability may attach to any person authorized to draw blood and other body fluids as provided by this chapter as a result of the act of drawing blood and other body fluids from any person, provided the blood and other body fluids were drawn according to generally accepted medical procedures. Any person who tampers or attempts to tamper with any sample of blood or other body fluids or the collection container without lawful authority is guilty of a class C felony.

SECTION 7. AMENDMENT. Section 31-13-05 of the North Dakota Century Code is amended and reenacted as follows:

31-13-05. DNA data base established - How utilized. The ~~division~~ laboratory shall establish a centralized data base of DNA identification records for convicted sexual offenders. The established system must be compatible with the procedures set forth in the national DNA identification index to ensure data exchange on a national level. The centralized DNA data base must be used to assist federal, state, and local criminal justice and law enforcement agencies within and outside the state in the identification or prosecution of sex-related crimes. The ~~division~~ laboratory shall receive, analyze,

and classify samples in compliance with section 31-13-04 and shall record the DNA result in a centralized data base for identification and statistical purposes. The ~~division~~ laboratory may contract with another laboratory for the analysis and classification of the samples. A report of the analysis certified by the ~~division~~ laboratory is admissible in any court as prima facie evidence of the facts stated in the report.

SECTION 8. AMENDMENT. Section 31-13-07 of the North Dakota Century Code is amended and reenacted as follows:

31-13-07. Removal of DNA profiles from data base. A person whose DNA profile has been included in the data base pursuant to this chapter may petition the district court for expungement on the grounds that the conviction on which the authority for including the DNA profile was based has been reversed or the case dismissed. The ~~division~~ laboratory shall expunge all identifiable information in the data base pertaining to the person and destroy all samples from the person upon receipt of a certified order.

SECTION 9. AMENDMENT. Section 31-13-08 of the North Dakota Century Code is amended and reenacted as follows:

31-13-08. Rules. The ~~state department of health~~ attorney general shall adopt rules pursuant to chapter 28-32 necessary to carry out provisions of the DNA data base identification system. The rules must include procedures for collection, analysis, and classification of samples of blood and other body fluids, data base system usage and integrity, and methods for contracting with another laboratory for the analysis and classification of samples.

SECTION 10. AMENDMENT. Section 31-13-09 of the North Dakota Century Code is amended and reenacted as follows:

31-13-09. DNA profiles to be available to law enforcement - Penalty. Upon payment of a reasonable fee established by the ~~division~~ laboratory, the ~~division~~ laboratory shall provide, upon the request of appropriate law enforcement agencies for use for official purposes, an updated list of names of individuals whose DNA profiles are stored in the data base at the ~~division~~ laboratory. Any person who disseminates, receives, or otherwise uses or attempts to use information in the data base, knowing that the dissemination, receipt, or use is for a purpose other than as authorized by law, is guilty of a class A misdemeanor.

SECTION 11. AMENDMENT. Subsection 9 of section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

9. Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena, without cost to the defendant, the person who conducted the chemical analysis referred to in this section to testify at the trial on the issue of the amount of alcohol, drugs, or a combination thereof in the defendant's blood, breath, saliva, or urine at the time of the alleged act. If the state toxicologist, the director of the ~~forensic sciences division of the state department of health~~ crime laboratory, or any employee of either, is subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16.

SECTION 12. A new section to chapter 54-12 of the North Dakota Century Code is created and enacted as follows:

State crime laboratory division.

1. A state crime laboratory is created as a division of the office of the attorney general. This division consists of a director, the state toxicologist, and such other personnel as may be appointed by the attorney general. The state crime laboratory may establish and charge fees for services rendered. The state crime laboratory must be administratively separated

from the bureau of criminal investigation. The director serves at the pleasure of the attorney general and is entitled to receive a salary set by the attorney general within the limits of legislative appropriation.

2. The state crime laboratory shall employ the services of a qualified toxicologist who must be the state toxicologist. The attorney general shall appoint the state toxicologist. The attorney general may appoint such qualified deputy state toxicologists as may be necessary to exercise the authority and responsibility prescribed by law for the state toxicologist. The results of toxicological or chemical testing or analysis, other than provided for in section 39-20-13, made by the state toxicologist at the request of law enforcement agencies for criminal investigation may not be disclosed directly or indirectly by the state toxicologist or any agent or employee of the attorney general to anyone other than the person or agency requesting the test or analysis or to any other person upon whom the toxicological or chemical test was performed or the person's authorized representative, except the state toxicologist may permit the inspection of the reports of any such test or analysis results by any other person having a proper interest therein as determined by the director of the state crime laboratory.
3. Upon the request of the state forensic examiner, any state's attorney, sheriff, chief of police, coroner, or other local, state, or federal law enforcement official, the attorney general may make available to the requesting official the state crime laboratory's facilities and personnel to assist in the investigation or detection of crimes and the apprehension or prosecution of criminals.

SECTION 13. REPEAL. Sections 12-60-21, 12-60-22, and 23-01-09.1 of the North Dakota Century Code are repealed.

SECTION 14. ADMINISTRATIVE RULES RELATING TO THE STATE CRIME LABORATORY. The legislative council shall transfer administrative rules that the attorney general designates as relating to the state crime laboratory from the title of the North Dakota Administrative Code relating to the state department of health to the title of the North Dakota Administrative Code relating to the attorney general. The legislative council, after consulting the attorney general, may change references in any administrative rules to conform to this Act. These rules continue in effectiveness without promulgation under chapter 28-32 of the North Dakota Century Code. Any certifications, designations, or approvals made by the state toxicologist, including those made on or before the effective date of this Act, continue to be valid after the effective date.

SECTION 15. EFFECTIVE DATE. This Act is effective July 1, 2003.

SECTION 16. EMERGENCY. This Act is declared to be an emergency measure.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2151 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 46 Nays 0 Absent 1

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 87 Nays 0 Absent 7

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at ___ o'clock _____ M.

Secretary of State